Supreme Court, U.S.
FILED
APR 8 1986
JOSEPH F. SPANIOL, JR.
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NO. 85-1485

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ALFREDA WALKER,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
To The Eighth District Court of Appeals
For Cuyahoga County, Ohio

PETITIONER'S REPLY BRIEF

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TPP

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The State's arguments in response to those raised by the Petitioner obviously depend for their validity on the assumption that this Court will somehow close it's eyes to the flawed rationales expressed in State v. Martin, 21 Ohio St. 3d 91 (Petition for Certiorari pending, Martin v. Ohio, No. 85-6461) upon which

it totally relies. To the extent the State puts all its eggs in that one basket, their willingness to do so is applauded. But more is involved here. For even if the flawed self-defense analysis made by the Ohio Supreme Court in Martin, supra, can somehow survive meaningful scrutiny (and Ohio continues on into the future as the only State in the Union where an accused who defends on the grounds of self-defense can literally be required to prove themselves not guilty), then there are other issues in this cause that would still have to be addressed.

With reference to the State's reliance on State v. Martin, the point that makes its reversal a sure bet is its indefensibly distorted view of this Court's decision in Patterson v. New York, 442 U.S. 202 (1977). A reading of

the analysis made by the Ohio Court of Appeals in this case, and the Ohio Supreme Court in Martin, in the light of the arguments made by this petitioner and the petitioner in Martin will literally verify the extent of their confoundment.

Indeed, it is really very hard to understand why these Courts simply refuse to recognize that the mitigation defense centralized in Patterson had a statutory origin and merely reflected a legislative judgment that if certain circumstances surrounding an otherwise murderous act were established the offense involved could be appropriately reduced.

Also, it should be noted that in these cases the Ohio Courts have refused to recognize in their reliance on Patterson that New York makes a distinction between defenses in mitigation and those in justification.

(See, New York Panel Law, §35.10 [McKinney 1975].) ("The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal ....") So postured it seems clear enough that this Court can hardly be credited with having ignored such an obvious distinction when it sanctioned the result reached by the jury in Patterson.

The above arguments aside, we continue to rely on the efficacy of the various arguments made in the Petition as providing, particularly in the light of the State's nebulous responses, other cogent reasons why this cause should be reviewed. Included in this list is the irrepressible idea that constitutional due process still requires the Record to show the presence of proof sufficient to support a finding of guilt beyond a

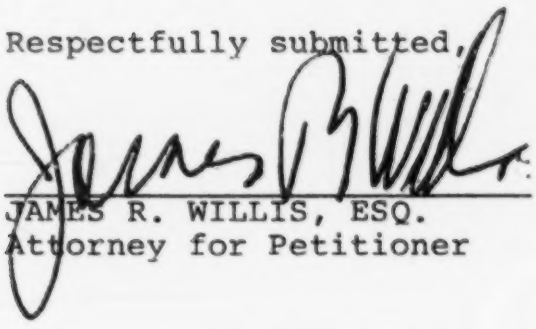
reasonable doubt. This burden is in no way lessened when the only proof of guilt lies in the fact-finder's assumption that the accused's version was false.

In our judgment, proof of guilt should be made of sterner stuff. And, this fact we contend is in no way lessened by our reviewing court's eagerness to impute other equally invalid rationales to the fact-finder as a basis for its decision.

CONCLUSION

For all of the reasons argued by the Petitioner, the writ prayed for should issue.

Respectfully submitted,



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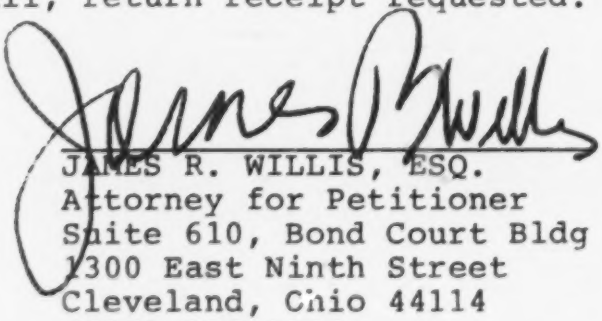
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was mailed to the office of John T. Corrigan, Cuyahoga County Prosecutor, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, this 8th day of April, 1986, by certified mail, return receipt requested.



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